

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

Katon Lang

v.

Case No. 07-cv-66-SM

Todd Gordon, et al.

**O R D E R**

Re: (Document No. 23) Defendants' Motion for Summary  
Judgment

Ruling: Denied. The motion is considered unopposed. Even so, it is plain from the exhibits filed by defendants that there are genuine disputes as to material facts which preclude summary judgment in defendants' favor. One need look not much farther than the exhibits upon which defendants rely, particularly Exhibit D in support of the motion. That exhibit consists of excerpts of sworn deposition testimony given by the plaintiff, filed by defendants, in which plaintiff describes an unwarranted application of physical force causing him serious injury. Indeed, he provides evidence which, if believed, supports his claim that the defendants "set him up" by spraying his sheets with pepper spray during an otherwise uneventful cell inspection for the very purpose of provoking a response that the officers could then use as a predicate for applying excessive force against him, without a legitimate penalogical reason, and for the purpose of inflicting pain and injury. Whether a jury accepts that evidence is a different question entirely, but given the material nature of the factual disputes regarding what happened and why, defendants are not entitled to judgment as a matter of law. A reasonable jury, if it accepts plaintiff's version of events, could find in his favor.

  
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Steven J. McAuliffe  
Chief Judge

January 13, 2009

cc: Michael J. Sheehan, Esq.  
Elizabeth L. Hurley, Esq.  
John A. Curran, Esq.